

1 of this opinion, unless we are going to go into all
2 of the facts and all of the arguments and
3 agreements between the attorneys involved in it. I
4 think it is misleading to cite to what the Court
5 has indicated is an unpublished opinion and try and
6 influence this Township Board with a piecemeal
7 approach to a complicated case.

8 So I ask it not be admitted into the
9 record and not be referenced.

10 MR. ST. CHARLES: We overrule the
11 objection and allow it.

12 We will note the objection.

13 Q (Continuing by MR. MUSKOVITZ): If you could read
14 the top paragraph, please.

15 A In the present case, plaintiff's request for
16 permanent light-duty assignment is not a reasonable
17 accommodation because it would impose an undue
18 hardship on defendant. Both the positions of
19 patrol officer and sergeant investigator required
20 plaintiff to have the ability to apprehend
21 criminals by use of physical force. To permit
22 plaintiff to hold one of these positions without
23 disability would undermine the effectiveness of the
24 police force. Therefore, plaintiff's argument has
25 no merit.

1 (Brief pause.)

2 MR. MUSKOVITZ: If I could just take the
3 indulgence of the Board for minute.

4 There was a rule I had considered
5 introducing and decided not to, and it may be
6 relevant at this time. I want to see if I have it
7 with me. So I want to see if can I find that.

8 (Brief pause.)

9 MR. MUSKOVITZ: Can we take short
10 recess?

11 MR. ST. CHARLES: I was going to suggest
12 that.

13 Stand in recess for a few minutes.

14 (Brief recess.)

15 MR. ST. CHARLES: We are back on the
16 record.

17 If you would proceed.

18 MR. MUSKOVITZ: I can mark these as an
19 exhibit. We have to have it copied. I don't have
20 it copied now.

21 I want to -- will you hear me okay here?

22 Q (Continuing by MR. MUSKOVITZ): Chief, I want you
23 to look at Rule 28.4158, responsibilities of the
24 employing agency. And if you could look where I
25 highlighted here --

1 MR. MUSKOVITZ: Let me ask Mr. Oselek, 1
2 can make this an offer of proof. It is basically
3 the recitation of some regulations from MCOLES.

4 Do you want me to do it through the
5 witness or can I read it into record?

6 MR. OSETEK: You know, I think you can
7 read it into the record. I think that would save
8 everyone time.

9 MR. ST. CHARLES: I would agree.

10 MR. OSETEK: If no one has any problems
11 with that.

12 MR. MUSKOVITZ: I make this as
13 Exhibit No. 11, and we can get copies of it made,
14 but Rule 28.4158 of MCOLES Rules.

15 MR. GREEN: We have that as part of
16 Exhibit No. 7, sir.

17 MR. MUSKOVITZ: Part, but not all.

18 Rule 8 requires that before employing
19 candidate who has passed the waiver of mandatory
20 training program, the recertification program we
21 heard some testimony about, employing agency shall
22 do all the following: Sub. 1A is fulfill the
23 requirements of 28.4103, except as provided for in
24 the rules.

25 48 -- I am sorry 28.4103, which you do

1 not have, is entitled hiring agency
2 responsibilities. And it does apply, typically, to
3 the new officer, but it does apply by the reference
4 to the rule I just cited to somebody who is getting
5 recertified. And the employing agency has to
6 certify the respective trainee meets the minimum
7 employment standard set forth in Rule 28.4102-a to
8 small i.

9 Rule 28.4102-a, this can only be done by
10 a government agency, is called medical selection
11 qualifications. Person selected to become a law
12 enforcement officer pursuant to the provisions of
13 the act shall meet all the following medical
14 requirements.

15 Sub. E of that says be free from any of
16 the following which may tend to impair the
17 efficient performance of law enforcement officers
18 duties which might endanger the lives of others or
19 the law enforcement officer, the first sub point
20 underneath that is physical defects.

21 The point being, if there is a physical
22 condition that would prevent an officer from
23 performing the efficient performance of their
24 duties which endanger the lives of the officer or
25 others of the law enforcement officers.

1 So the point being, to be recertified one
2 has to show that they do not have any physical
3 conditions that would prevent them from doing all
4 those functions, because without being able to do
5 those functions and functioning as a police
6 officer, they may endanger themselves or others.

7 And I will introduce that through a
8 convoluted set of rules I did not think was going
9 to be an issue here, so I did not have it as an
10 exhibit. But I will provide that to the Board and
11 counsel after this hearing.

12 MR. ST. CHARLES: Are you moving to add
13 that as an exhibit?

14 MR. MUSKOVITZ: I move to have those
15 relevant rules as combined into Exhibit 11.

16 MR. ST. CHARLES: Is there an
17 objection?

18 MR. OSETEK: No.

19 MR. ST. CHARLES: Okay. Everyone will
20 be made a copy at the end of the proceeding
21 tonight?

22 MR. MUSKOVITZ: Yes.

23 MR. ST. CHARLES: It will be received as
24 Exhibit 11 as marked.

25 Q (Continuing by MR. MUSKOVITZ): Chief Brookins,

1 were you aware of that requirement?

2 A No.

3 Q They had to be recertified? A recertified
4 individual had to be examined by a physician?

5 A I was aware of that requirement.

6 Q And they had to meet certain standards for the
7 medical exam?

8 A Yes.

9 Q Just to recap, is Mr. Young currently certified?

10 A No, he is not.

11 Q Based upon the limitations he identified in his May
12 letter, May 2001 letter to you, can he perform all
13 the functions of, essential functions of a police
14 officer identified by MCOLES?

15 A No, he cannot.

16 Q Does the department have any full-time, light-duty
17 assignments?

18 A No, it does not.

19 Q Do you believe it would be an undue hardship to
20 allow Mr. Young to perform with the restrictions he
21 identified?

22 A Yes.

23 Q Based on these factors, do you have a
24 recommendation regarding Mr. Young's employment?

25 A I recommend we terminate him from employment.

1 MR. MUSKOVITZ: Thank you.

2 I have no other questions.

3 MR. ST. CHARLES: Mr. Osetek, do you
4 wish to cross?

5 MR. OSETEK: Certainly.

6 Our discussion off the record before we
7 sat down here was how this was going to take a
8 half-hour and we were all going to be home.

9 Obviously Mr. Muskovitz gets paid by the
10 hour or should if he isn't.

11 MR. SEDLAK: He is doing it for free, we
12 thought.

13 EXAMINATION

14 BY MR. OSETEK:

15 Q Chief Brookins, I have some questions for you.

16 We have not met before, have we?

17 A No, sir.

18 Q I have not called or interviewed you or anything of
19 that nature?

20 A Correct.

21 Q You have not had the opportunity to stop me for any
22 civil or criminal infractions?

23 A No, sir.

24 MR. MUSKOVITZ: Take a good look.

25 MR. OSETEK: I am going to have to

1 change cars.

2 MR. MUSKOVITZ: I want to make sure that
3 answer was accurate.

4 Q (Continuing by MR. OSETEK): You have been the
5 chief of police since 1992?

6 A Correct.

7 Q Did you take a physical when you started here?

8 A No, I did not.

9 Q Do you have any physical limitations yourself?

10 A No, I do not.

11 Q Is it your testimony that all of the items on
12 Exhibit No. 8, all the requirements, essential
13 function requirements, you have been able to
14 provide those and can provide those yourself as you
15 sit here today?

16 A Yes.

17 Q And you have always been able to do that?

18 A With an exception of a period of time I was on sick
19 leave, which I couldn't do it during that time,
20 yes, I can.

21 Q But you were still a sworn officer while on sick
22 leave?

23 A Yes, I was.

24 Q How long were you on sick leave?

25 A Approximately three and-a-half months.

1 Q All right. Now, you are not a physician; is that
2 correct?

3 A Correct.

4 Q Okay. And you have not examined Officer Young
5 physically?

6 A Correct.

7 Q Looking at Exhibit 8, which I believe you have in
8 front of you --

9 A Exhibit?

10 Q Eight.

11 It is my understanding your testimony was
12 there were aggressive-duty assignments that you
13 believed Officer Young could not handle.

14 Was that your testimony?

15 A Based upon the limitation he identified to me, that
16 is correct.

17 Q And you contend that he cannot do No. 1?

18 A Yes.

19 Q Two?

20 A Yes.

21 Q Five?

22 A Yes.

23 Q Six?

24 A Yes.

25 Q Twelve?

1 A Yes.

2 Q Fourteen?

3 A Yes.

4 Q Fifteen?

5 A Yes.

6 Q Seventeen?

7 A Yes.

8 Q Nineteen?

9 A Yes.

10 Q Twenty?

11 A Yes.

12 Q Did you ask him specifically if he could do any one
13 of those?

14 A No.

15 Q Did you send him for a physical to have a physician
16 determine if he could do any one of those?

17 A No.

18 Q You just decided on your own he is not capable of
19 doing those?

20 A I made that assessment based on the limitations he
21 identified.

22 Q But you haven't done any physical exam, and you
23 have not asked him anything about those?

24 A That is correct.

25 Q And you have not had anybody else examine him to

1 determine that?

2 A That is correct.

3 Q How much time have you spent with Officer Young in
4 the past 10 years since he was off on Workman's
5 Compensation?

6 A Essentially on a day-to-day basis from March 16
7 until mid-December of '92.

8 Q Since 1992?

9 A Right.

10 Q You have spent virtually no time with him, have
11 you?

12 A That is correct.

13 Q You don't have any personal knowledge about his
14 physical ability today?

15 A That is correct.

16 Q Now you testified, I believe, that the last time
17 Officer Young did work for the Township was in
18 December of 1992; is that correct?

19 A Yes.

20 Q Wasn't he called in to testify as a sworn officer
21 on behalf of the Township at a court proceeding
22 sometime after that?

23 A Yes.

24 Q So he was a sworn officer at the time he testified
25 on behalf of the Township?

1 A To my recollection. I don't know which date and
2 time and event you are talking about.

3 Q So that was in September 1993?

4 A If he made a court appearance on behalf the
5 department or under subpoena in 1993, he would
6 still be a certified police officer.

7 Q So when you sent your letter, I want to get the
8 right exhibit number here, Exhibit No. 6 -- no, I
9 am sorry.

10 Looking at Exhibit No. 5 from the
11 Department of State Police, it says in your letter
12 you indicated Officer Young's last day of work as a
13 sworn officer was December 10, 1992.

14 Do you to see that?

15 A Yes.

16 Q That is not a true statement, is it?

17 A MCOLES letter to me dated May 21st, 1996 --

18 Q You did not understand my question?

19 A I can't answer your question without citing this
20 particular memo.

21 Q Either that is a true statement or not a true
22 statement.

23 A Would you ask the question again?

24 Q Sure.

25 The statement here, in your letter you

1 indicated Officer Young's last day of work as a
2 sworn officer was December 10, 1992. That is not a
3 true statement, is it?

4 A His last day of work, his day of work was that day.

5 Q But not his last day as a sworn officer, correct?

6 A His last day as a scheduled officer. But as sworn
7 officer, he still had certification for two years
8 after his last date scheduled.

9 Q So in effect, when the Michigan Department of State
10 Police was relying on your information, that was
11 all they were relying on when they issued their
12 letter that is Exhibit No. 5, correct?

13 A Yes.

14 Q And if any of that information is incorrect, the
15 basis for that letter is incorrect, isn't it?

16 A MCOLES based their assessment on my request.

17 Q On your request and on the information you provided
18 to them?

19 A Yes.

20 Q Did they ever send you a copy of a letter that they
21 sent to Officer Young indicating he was no longer
22 certified?

23 A That they sent to Mr. Young?

24 Q Officer Young.

25 A I never received a copy from MCOLES that was

1 directed to anybody other than myself.

2 Q So as far as you know, they have never decertified
3 Officer Young, have they?

4 A No.

5 Q On October 20th of 1993, you informed Officer Young
6 he was suspended, didn't you?

7 MR. MUSKOVITZ: What is the date again?

8 MR. OSETEK: October 20, 1993.

9 A I don't believe I ever told Officer Young he was
10 suspended.

11 Q (Continuing by MR. OSETEK): You required him to
12 turn in uniforms, keys, badges, other issued
13 equipment?

14 A Based on my interpretation; his status was
15 inactive.

16 Q Did you get a legal opinion on that at that time?

17 A Not directly.

18 Q Did you consult with the Township Board and have
19 them reach a decision?

20 A I consulted with the township supervisor.

21 Q But you suspended him on or about October 20, 1993?

22 A I had him turn his equipment in.

23 Q So he was never suspended back then?

24 A I would not use the terminology suspended.

25 Q Did you require Officer Young meet with Ron Crowe

1 and turn in all of his equipment?

2 A I don't remember if I required Crowe to meet with
3 Young or Young to meet with Crowe.

4 Q Are you familiar with Section 8 of the rules and
5 regulations regarding suspensions?

6 A You have to show me the specific section.

7 You are talking about our rules and
8 regulations?

9 Q Yes.

10 Let me refer to it. I don't have
11 multiple copies, but under Section 8, suspensions,
12 Paragraph B, to surrender property.

13 In all cases of suspension, the suspended
14 member will immediately surrender the police badge
15 and all other property in his possession belonging
16 to the department to the suspending officer who
17 will, as soon as possible thereafter, deliver the
18 same to the chief of police to be held by impending
19 investigation.

20 Isn't that what he required Officer Young
21 to do back on October, about October 20th, 1993?

22 A I required him to turn his equipment and uniforms
23 into the department.

24 Q Did you ever do an investigation into any wrong
25 doing he had done?

1 A Related to that directive?

2 Q To anything.

3 A Yes, I did.

4 Q Relating to this directive on or about October 20,
5 1993, did you do any investigation?

6 A Not related to that.

7 Q Was it your testimony that all of the police
8 officers on the force are required to meet all of
9 the Exhibit No. 8 requirements at all times?

10 A I believe every officer should be able to do those
11 essential job functions.

12 Q Is every officer on the department able to do those
13 essential job functions?

14 A To my knowledge, yes.

15 Q Now, you created the investigator or investigative
16 follow-up position. That is correct, isn't it?

17 A I made an assignment to that position.

18 Q And hadn't you previous to making that assignment
19 asked the Township for an additional slot so you
20 could place somebody in that investigator's
21 position?

22 A Not that I recall.

23 Q And that position at that time was solely to
24 perform follow-up investigative duties?

25 A No.

1 Q No?

2 A No.

3 Q After his injury, did Officer Young ever inform you
4 he could perform the duties of investigation
5 follow-up?

6 A With limitations and conditions.

7 Q But he informed you of that after his injury?

8 A Not -- I don't remember when he notified me. It
9 may have been pursuant to his lawsuit in 1995.

10 But I became aware of what he was citing,
11 his limitations and conditions.

12 Q The department did have him doing light duty for a
13 period of time after his injury, didn't they?

14 A Yes.

15 Q And they have had light-duty assignments for other
16 individuals that were under a disability?

17 A There have been no patrolmen given light duty since
18 Mr. Young left in December of 1992.

19 Q Has Officer Danforth been on light duty at anytime?

20 A I stand corrected.

21 She was only light duty as a result of
22 maternity.

23 Q So she was suffering under a disability?

24 A She was suffering -- she was pregnant. I don't
25 know if you want to call that suffering and

1 disability.

2 Q I think the law recognizes it as a disability.

3 A I am not certain.

4 Q That was on more than one occasion, correct?

5 A She was pregnant to my recollection in late 1992,
6 and then on a subsequent date after that.

7 Q So on two separate occasions the department placed
8 her on light-duty work?

9 A Yes.

10 Q Due to her medical condition?

11 A Yes.

12 Q And at that point in time is it your testimony she
13 could have performed all of the Exhibit 8
14 assignments that you believe are imperative for an
15 officer to perform?

16 A For an officer completing full-time, full-duty, no
17 she could not.

18 Q Was Sergeant Walter ever on light duty?

19 A Sergeant Walter was on light duty. I don't
20 remember the year he was. His duty was restricted
21 on a day-to-day basis depending on the needs of the
22 department.

23 Q But he was on light duty?

24 A He is a sergeant, too, yes.

25 Q For an indefinite period of time?

1 A No, specific period of time.

2 Q How long was that time?

3 A I believe it was 60 days.

4 Q Sergeant Crowe ever on light duty?

5 A Sergeant Crowe had some surgery. I don't remember
6 what year. He came back without restrictions, and
7 I assigned him to a day-shift job working
8 administrative functions in the office.

9 Q And how long was that assignment?

10 A I am not certain.

11 Q But he was essentially assigned light duty?

12 A He was assigned administrative duties in the
13 office. I don't call it light duty.

14 Q Are there any of those functions he performed that
15 Officer Young would not be able to perform?

16 A I can't even speculate.

17 Q You didn't have trouble speculating a little
18 earlier. Try and speculate now.

19 A I can't speculate.

20 Q Are you familiar with the Township Board's
21 resolution with regard to the Americans with
22 Disabilities Act?

23 A Yes, I am now.

24 Q I believe it was passed in 1993.

25 MR. OSETEK: If I may approach.

1 Let me hand you what is Resolution I-93.
2 I don't know if we should mark this A or
3 12.

4 I don't know if the Board would like
5 copies of Resolution I-93?

6 MR. ST. CHARLES: We have it.

7 MR. OSETEK: I would assume so. I
8 assume some of you were involved in passing it.

9 MR. ST. CHARLES: No.

10 MR. GREEN: No, that was nine years ago.

11 MR. SEDLAK: The Board changed since
12 then.

13 MR. OSETEK: You guys have term limits?
14 Term limits every election.

15 MR. ST. CHARLES: Every four years.

16 Q (Continuing by MR. OSETEK): Is it your belief
17 that your actions in not providing light-duty work
18 for Officer Young is in compliance with the
19 Township of the Green Oak Resolution I-93 or I-93?

20 A Please rephrase your question.

21 Q Could you read I back, please?

22 (Record repeated by Reporter.)

23 A I would defer to answering that question because I
24 have had counsel conversations with it since the
25 litigation with Mr. Young. So I don't have an

1 answer I can give you that I have not discussed
2 with counsel, and counsel has not given me
3 direction.

4 MR. OSETEK: Do you want to instruct him
5 not to answer the question?

6 MR. MUSKOVITZ: Who are you referring
7 to?

8 THE WITNESS: I am referring to
9 Mr. McGlinchey, who formally represented the
10 Township, and Mr. Greg Ulrich, U-l-r-i-c-h, who
11 represented the Township in litigation.

12 MR. ST. CHARLES: Which neither are
13 here.

14 MR. MUSKOVITZ: Do you understand what
15 question is asked?

16 THE WITNESS: I don't specifically
17 understand the question.

18 I know this was discussed with counsel,
19 and he is asking me, essentially, do I know I
20 violated this resolution. If that is the question,
21 I do not believe I violated the resolution.

22 MR. ST. CHARLES: Is there a different
23 way you can phrase it?

24 MR. OSETEK: Essentially I just, you
25 know, it is not a trick question.

1 Q (Continuing by MR. OSETEK): I am looking at, as I
2 understand it, you were the person who determined
3 that Officer Young should be terminated as a result
4 of this Veterans Preference Hearing, correct?

5 A No. I am not making a determination. I am making
6 the recommendation.

7 Q You are making the recommendation.

8 And the Township -- I mean we have a
9 federal law, a state law. The Township is also on
10 record with a resolution recognizing that certain
11 things, accommodations, what have you, need to be
12 made with regard to individuals with disabilities.

13 And what I am asking you is if you
14 believe your recommendation that Officer Young be
15 terminated is in compliance with the township
16 resolution?

17 A I don't know if I am in a position to make that
18 judgement. I don't believe that based upon the
19 limitations and conditions he is asking for that we
20 have a position we have to create to do so.
21 Therefore, I don't believe A.D.A., requires us to
22 create a position.

23 Q I don't think other than your suggestion there be a
24 creation of position. We heard a lot of testimony
25 of various light-duty assignments that have been

1 available in the past to other individuals. And we
2 had your own testimony that you did, in fact,
3 create, if not a position what sounded pretty much
4 like a full-time assignment of a follow-up
5 investigator.

6 And so I am asking you in light of the
7 testimony we already heard. I am not asking you --
8 I don't believe anyone has asked you to create a
9 position. It is to use available work assignments
10 or to enable Officer Young to come back to his
11 job.

12 A I really, truthfully, cannot give you an opinion on
13 that.

14 Q Fair enough.

15 Let's talk a little bit about the stun
16 gun. I think we heard probably more than we need
17 know about the stun gun, but one of the
18 accommodations that Officer Young suggested that
19 could be made was to enable him to use a stun gun
20 in conjunction with his police work, correct?

21 A Yes.

22 Q He didn't tell you he didn't plan on carrying a
23 regular gun, did he?

24 A No.

25 Q Has Officer Young ever failed his handgun

1 certification to your knowledge?

2 A To my knowledge, no.

3 Q He has a perfect record with regard to handgun
4 certification?

5 A Can't speak to that.

6 Q Do you have any reason to believe he could not pass
7 any handgun certification test today?

8 A No.

9 Q And there was never any of suggestion by
10 Officer Young that he did not plan on carrying a
11 handgun as a police officer?

12 A That is correct.

13 Q So all we heard about deadly force and all this
14 other stuff with regard to stun guns does not
15 really apply to this situation?

16 A Except me as the policy maker in the department is
17 the one who decides what type of weapons the
18 officers carry.

19 Q I understand that. That is not the issue.

20 He never suggested he was not going to
21 carry a handgun?

22 A He didn't suggest he wasn't.

23 Q He never suggested he was not going to do it. In
24 fact, he always carried one before when he was
25 working full-time, didn't he?

1 A Yes.

2 Q And you don't have any reason to believe he
3 wouldn't be certified in the handgun testing
4 procedures?

5 A If he could successfully complete the requirements
6 of multiple positions, getting on the ground,
7 shooting from prone to kneeling position.

8 Q You don't have any reason to believe he couldn't do
9 that?

10 A I cannot make that assessment.

11 Q Chief Brookins, do you recall when in December of
12 1993 -- 1992, Officer Young had a new child?

13 A Yes.

14 Q And at that time didn't you advise him not to use
15 sick time or vacation time after his son was born,
16 but rather to go to his doctor and ask to be taken
17 off on Comp.?

18 A It was 10 years ago. I don't remember my
19 conversation specifically with Mr. Young.

20 Q Do you remember something generally like that?

21 A The only thing I recall from Mr. Young was he
22 wanted to attend physical therapy while on duty and
23 be paid by the department. I declined that request
24 saying that if he left for physical therapy, he had
25 to use personal time.

1 Q Maybe you didn't understand my question.

2 A Did you suggest or instruct Officer Young to ask to
3 be put out on Workmens' Comp. rather than use
4 vacation or sick time at the time his child was
5 born in December of '92?

6 A I don't recall.

7 Q Did you ever articulate a plan to anyone that if
8 Officer Young went off on Workman's Comp., you
9 would never allow him to return to duty?

10 A I had a discussion with the case worker from
11 Workers' Comp., who stated I had no obligation to
12 create a position for Mr. Young. I had a
13 conversation with Sergeant Crowe related to my
14 conversations with the Workers' Comp.
15 representative that I had no obligation to provide
16 him light duty.

17 Q But did you say to Sergeant Crowe that if he goes
18 off on Comp., I am not going to let him back on
19 active duty?

20 A If I said anything to Sergeant Crowe, I would have
21 said I had no obligation to let him return to light
22 duty, per the case worker from Workers' Comp. And
23 the specifics of my conversation with him were
24 almost 10 years ago.

25 Q Didn't you assert in a deposition in 1996 that that

1 was a privileged communication and refused to
2 answer that question or a similar question?

3 A I don't think I refused to answer the question. I
4 believe I stated I thought it was a privileged
5 conversation with Sergeant Crowe.

6 Q And you didn't answer the question?

7 A I think I did answer the question.

8 Q Did you ever tell Officer Young or the Comp.
9 specialist you would not let him return until he
10 was 100 percent?

11 A I have had so many conversations with people
12 related to him since 1992, I don't recall if I
13 specifically told him or her. I do know I went on
14 the recommendation and advice of the Workers' Comp.
15 representative that he did not have to be
16 accommodated in a light-duty position unless he was
17 fully able to return to work without restrictions.

18 Q And that was with a Workmens' Comp. specialist?

19 A My conversation was with a Workers' Comp.
20 specialist. I may have talked to Mr. Young or an
21 attorney about it. It was ten years ago, sir.

22 Q Did you talk to anyone about it in the context of
23 the Veterans Preference Act and what that requires
24 you to do with regard to Veterans?

25 A I wasn't aware of the Veterans Preference Act until

1 our current counsel had the discussion with me
2 about it.

3 Q After Officer Young turned in his equipment in
4 September -- October of 1993, did you receive a
5 call from the union indicating he was protesting
6 that?

7 A Protesting what?

8 Q That he had to turn in his equipment.

9 A I don't remember having heard anything from the
10 union related to it.

11 Q And I assume that the union was never notified
12 verbally or in writing that Officer Young was
13 suspended at or about that time?

14 A Again, sir, I don't recall ever telling Mr. Young
15 he was suspended, so I wouldn't have had that
16 conversation, communication with him.

17 Q Have you ever had any conversations with the union
18 about the status of Officer Young?

19 A When you speak union, could you elaborate who you
20 are talking about?

21 Q Well, I understand there have been several unions
22 during the tenure of yourself with regard to the
23 patrolmen?

24 A Two of them, Police Officers' Association of
25 Michigan, and Michigan Association of Police.

1 Q And one was in for a short period of time when you
2 first started?

3 A Yes.

4 Q And was that the Police Offices of Michigan?

5 A P.O.A.M., Police Officers Association of Michigan,
6 yes.

7 Q After that it was the other union?

8 A Michigan Association of Police, which is currently
9 the union.

10 Q Have you had any discussions with either of those
11 two unions regarding the status of Officer Young?

12 A I don't recall.

13 MR. OSETEK: I would move for
14 introduction of Exhibit 12, which is the Township
15 Resolution into evidence.

16 MR. ST. CHARLES: Is there an
17 objection?

18 MR. MUSKOVITZ: No objection.

19 MR. ST. CHARLES: To the resolution I-93
20 or I-93.

21 MR. OSETEK: I also move the
22 introduction of Exhibit 13, which is the enrolled
23 Senate Bill No. 809.

24 And I have provided some copies. I
25 included in mine, not in yours, is the Senate bill

1 history, which I would like to also make and
2 attachment to the bill.

3 It indicates when it was presented to the
4 governor, when it was approved, so you will have
5 the actual chronology of when things happened. And
6 I would copy that if possible afterwards or I could
7 get it out here tomorrow sometime.

8 MR. ST. CHARLES: Is there an objection
9 to either?

10 MR. MUSKOVITZ: No.

11 MR. ST. CHARLES: Forward these to the
12 clerk for distribution to the Board.

13 And we would receive Exhibits No. 12 and
14 13.

15 MR. MUSKOVITZ: May I request, do you
16 want, I was going to do the same with Exhibit 11.

17 Do you want that tonight or can I forward
18 that at another date?

19 MR. ST. CHARLES: Well, we can make
20 copies after this proceeding.

21 Q (Continuing by MR. OSETEK): Chief Brookins, are
22 you aware at a Township meeting on March 19, 1997,
23 the Township Board indicated that the general rules
24 apply to Officer Young, the general rules of the
25 department apply to Officer Young?

1 A I think the general rules apply to the entire
2 department, not just to him.

3 MR. OSETEK: I would move for
4 introduction of Exhibit No. 14.

5 I have four copies. I don't know if
6 anyone would like them.

7 MR. MUSKOVITZ: For the record, I note
8 these are unapproved Minutes of the Board as noted
9 on the top left-hand corner.

10 MR. ST. CHARLES: So noted.

11 Is there an objection?

12 MR. MUSKOVITZ: Not being the official
13 Minutes, if it is being introduced as the Minutes,
14 I do have an objection on that basis.

15 MR. ST. CHARLES: Then we will receive
16 them as Exhibit No. 14 and note the objection for
17 the record.

18 MR. OSETEK: Also, down at the bottom it
19 says, synopsis approved. So there was some sort of
20 a ratification of this. I don't know if you saw
21 that down in the corner.

22 MR. MUSKOVITZ: Yes.

23 (Brief recess.)

24 (Discussion held off the record.)

25 MR. ST. CHARLES: Are we ready to

1 proceed?

2 MR. OSETEK: I think we are.

3 Q (Continuing by MR. OSETEK): Chief Brookins,
4 looking at the Veterans Preference in Employment
5 Act for the State of Michigan, with the exception
6 of the recent action with regard to Officer Young,
7 have you ever had any involvement with the
8 Veterans Preference Act?

9 A No.

10 Q Have you read it?

11 A No.

12 Q And yet you are the one here today that is
13 recommending in a hearing called under this Act
14 that Officer Young be terminated, correct?

15 A In consultation with counsel, the request for a
16 Veterans Preference Hearing was made to the Board.

17 Q Let me ask you a couple questions about the Act.

18 To your knowledge, is the reason that
19 Officer Young is -- was the attempt of
20 Officer Young to be removed from his position
21 because of any official misconduct he ever engaged
22 in?

23 A No.

24 Q Was the reason you are recommending that he be
25 removed from his position that he was involved in

1 habitual, serious or willful neglect in the
2 performance of duty?

3 A No.

4 Q Is the reason you are recommending that he be
5 removed based on any knowledge or incidents of
6 extortion that Officer Young was involved with?

7 A No.

8 Q Are you recommending that he be removed because he
9 was convicted of intoxication?

10 A No.

11 Q Are you recommending that he be removed because he
12 was convicted of a felony?

13 A No.

14 Q Are you recommending he be removed because of
15 incompetence?

16 A No.

17 Q Do you believe, based on anything you have personal
18 knowledge of, that Officer Young is incapacitated?

19 A I have no personal knowledge of any type of
20 incapacitation he may have.

21 Q Are you aware of anything that you would consider
22 just cause that would justify the removal of
23 Officer Young from the Green Oak Township Police
24 Department or police force?

25 A No.

1 MR. OSETEK: I have nothing further of
2 this witness.

3 Thank you very much.

4 MR. MUSKOVITZ: I have a few redirect
5 questions.

6 MR. ST. CHARLES: You wish to redirect?

7 MR. MUSKOVITZ: Yes.

8 FURTHER EXAMINATION

9 BY MR. MUSKOVITZ:

10 Q Chief Brookins, you were asked some questions that
11 while Mr. Young was on leave he may have testified
12 at a hearing and there may have been some other
13 contacts with the department.

14 As earlier in your testimony you said his
15 status was inactive while he was on Workers' Comp.

16 A For a better term, I couldn't come up with one,
17 inactive would be accurate.

18 Q He remained technically as an employee of the
19 department?

20 A Yes.

21 Q Under the Exhibit No. 4, which is the MCOLES
22 statute, I would direct the, I think I can do this
23 partly by just directing the Board to certain
24 pages. And then this is a preface to a question
25 for the chief.

1 On page 15 of the statue section --

2 MR. OSETEK: I object to any discussion.

3 This is redirect testimony, which is an
4 opportunity to address issues that I brought up
5 that were not brought up on direct testimony. I
6 did not talk about MCOLES statutes at all. So I
7 believe it is inappropriate at this time for
8 additional questioning by Mr. Muskovitz about the
9 MCOLES statute.

10 So I would ask that redirect not be
11 permitted.

12 MR. MUSKOVITZ: If I can respond.

13 I believe this goes to the issue of
14 definition of employment from the standpoint of
15 department employment and employment for MCOL and
16 the issue of whether or not he remains a certified
17 police officer.

18 So I believe it is relevant to that issue
19 addressed on cross-examination.

20 MR. ST. CHARLES: We will let you
21 overrule. We will proceed, allow you to proceed.

22 Q (Continuing by MR. MUSKOVITZ): Section --

23 A Excuse me, Mr. Muskovitz, can you tell me which
24 exhibit you are referring to?

25 Q If you look to at Exhibit No. 4, page 15.

1 A Yes.

2 Q Is it your understanding that if a police officer
3 is not functioning in an active capacity for a
4 period of time, that their certification can be
5 voided or is void?

6 MR. OSETEK: Objection, foundation.

7 Q Let me --

8 Go ahead.

9 MR. OSETEK: We are talking about an
10 agency who has its own policies and procedures, and
11 presumably performs under those.

12 And what Chief Brookins is being asked is
13 what that agency would do.

14 He does not have personal knowledge of
15 that. If they wanted to bring someone from the
16 agency in to talk about that, this was their
17 opportunity. But to have Chief Brookins speculate
18 as to what MCOL's or some other agency would do is
19 just that, speculation.

20 And I would ask it not be permitted.

21 MR. MUSKOVITZ: Well, what I am having
22 him address, and it is not speculation, I can do it
23 through argument. I am relying on statute and
24 regulations.

25 Let me introduce one other rule as an

1 exhibit from MCOLES. That would be Rule 28.4101,
2 Sub-Rule 1G, which defines employment under the
3 MCOLES rules and regulations which ties back into
4 the statute.

5 So I would propose introducing that as
6 Exhibit No. 15, I believe we are up to.

7 MR. ST. CHARLES: Are you talking about
8 what was -- we haven't seen that yet?

9 MR. MUSKOVITZ: No, you haven't.

10 MR. OSETEK: I have not seen that, and I
11 would indicate that I think it is not relevant to
12 this Veteran's Preference Act hearing.

13 MR. ST. CHARLES: I am going to ask for
14 a procedural question.

15 MR. CONNELLY: Mr. Muskovitz, you are
16 moving to introduce whatever that is as Exhibit
17 No. 15?

18 MR. MUSKOVITZ: Yes.

19 MR. CONNELLY: An objection is, it is
20 not relevant to this hearing?

21 MR. OSETEK: Yes.

22 MR. CONNELLY: Are you familiar with the
23 exhibit?

24 MR. OSETEK: I have never seen it.

25 MR. CONNELLY: Well, it is difficult to

1 speak to relevancy without having seen it, I would
2 think.

3 MR. MUSKOVITZ: I think one issue that
4 will be briefed by us, the chief's testimony not
5 withstanding, because it is the decision the Board
6 has to make.

7 As I indicated, I prefaced my opening
8 remarks about whether there is a question as to
9 technically even the Veterans Preference Act
10 applies to a situation when somebody is being
11 terminated for reasons not specified in the act.
12 And I think there is some authority to deal with
13 that issue.

14 But I do believe to the extent someone
15 cannot perform all the functions of a position for
16 which they are applying and no obligation to
17 accommodate, that doesn't raise a question as to
18 whether or not they are incapacitated. And that is
19 an issue addressed in Section 1 of the
20 Veterans Preference Act.

21 And also to the extent that if an
22 individual cannot perform the functions of the job,
23 are they incompetent in the technical sense they
24 cannot perform their job.

25 Historically, the statute dealt with

1 issues of misconduct as evidenced by the questions
2 of Counsel. But I believe it is not limited to
3 that.

4 So I think tieing back to the issue of
5 MCOLES and certification issues and the job duty
6 issues are important to the standpoint of whether
7 or not there is cause to terminate here.

8 MR. ST. CHARLES: Sir?

9 MR. OSETEK: I would let him inquire
10 into this statute or whatever it is.

11 I withdraw my objection.

12 MR. MUSKOVITZ: As I said, I can do it
13 by testimony. It is a rule.

14 MR. OSETEK: You already argued it.

15 MR. MUSKOVITZ: Let me just introduce it
16 as an Exhibit No. 15.

17 MR. ST. CHARLES: You want to introduce
18 it as Exhibit No. 15.

19 That is a motion.

20 MR. OSETEK: Objection to relevance.

21 MR. ST. CHARLES: We will receive this
22 as Exhibit 15, and we will note the objection.

23 Q (Continuing by MR. MUSKOVITZ): You were asked
24 some questions about certain officers who may have,
25 for example, Officer Danforth who during a

1 pregnancy had some light-duty assignment, who did
2 not perform all the duties of a police officer; is
3 that correct?

4 A That is correct.

5 Q All the examples you were asked about, were those
6 temporary situations?

7 A Yes.

8 Q Have you ever had an officer who has indicated they
9 did not want to perform on a regular basis, on a
10 permanent basis aggressive police tactics?

11 A No. Mr. Young is my first.

12 Q And have you ever had any officer request they
13 basically be reassigned from a police officer
14 position to a different position in the department
15 other than Officer Young?

16 A No.

17 Q I just want to confirm that currently the police
18 officers are doing their own follow-up on
19 investigations?

20 A Yes.

21 Q And you do not have a slot available for a
22 full-time, follow-up officer or investigator?

23 A That is correct.

24 MR. MUSKOVITZ: I have no other
25 questions.

1 THE WITNESS: If I can consult Counsel
2 for a moment, please.

3 MR. OSETEK: I object to that.

4 MR. ST. CHARLES: You object to that?

5 MR. OSETEK: Yes.

6 Mr. Muskovitz indicated he has no further
7 questions.

8 THE WITNESS: I would have said it before
9 I realized he said he has no further questions.

10 MR. ST. CHARLES: We will sustain that
11 at this time.

12 Mr. Osetek, do you wish to redirect at
13 this time?

14 FURTHER EXAMINATION

15 BY MR. OSETEK:

16 Q Other than the short period of time in the fall of
17 1992, have you ever made an offer of any light-duty
18 work for any period of time, whether on a part-time
19 or full-time basis to Officer Young?

20 A No.

21 Q Have you hired any part-time people to do court
22 work or other work that officers have done as part
23 of their job during the entire time period that
24 Officer Young has been off on disability?

25 A MCOLES --

1 MR. MUSKOVITZ: Before you answer that,
2 I object.

3 I don't believe it is relevant
4 necessarily what he has done at anytime Mr. Young
5 was off on disability, since Mr. Young only
6 requested to return to work as of May of last year
7 and has indicated his limitations at that time.

8 With that objection.

9 MR. ST. CHARLES: How does the part-time
10 -- how is that relevant in this?

11 MR. OSETEK: If there was any work
12 available for Mr. Young to do rather than go out
13 and hire a nonfully-certified police officer, they
14 hire part-time work. And if they have, in fact,
15 done that, which I believe we all are aware that
16 has happened, if that was the type of work that
17 Mr. Young could do, and he has been cleared to work
18 since May of 1993 and the department has been well
19 aware of that, if there was an opportunity for him
20 to do any work and he was capable of doing it, the
21 work should have been made available to him rather
22 than to go out and hire an outside individual.
23 That is how it is relevant.

24 MR. ST. CHARLES: I don't see the
25 relevancy of this.

1 At this time, I am going to overrule the
2 objection.

3 MR. OSETEK: No. You are going to
4 sustain.

5 MR. ST. CHARLES: Excuse me.
6 I have been up since five o'clock.

7 MR. OSETEK: I cannot tell that to a
8 regular judge, but I will say it to you.

9 You want to sustain it.

10 MR. ST. CHARLES: We realize I am not a
11 judge, too.

12 MR. OSETEK: All of you are today.

13 It is a good experience, I am sure, for
14 everyone. You have a better appreciation of what
15 they do.

16 MR. ST. CHARLES: The objection is
17 sustained.

18 MR. PALMER: Being a judge for a day, do
19 we get extra pay?

20 MR. SEYMOUR: For you guys.

21 MR. SEDLAK: When my grandson rubs his
22 eyes like that, it is time for a nap.

23 MR. OSETEK: I have no other questions.
24 Thank you.

25 MR. MUSKOVITZ: I have no further

1 questions.

2 MR. ST. CHARLES: You may step down.

3 Mr. Muskovitz, do you have any other
4 witnesses?

5 MR. MUSKOVITZ: In light of the hour, I
6 think we said we were not going to proceed past ten
7 o'clock.

8 MR. ST. CHARLES: We were hoping not to.

9 MR. MUSKOVITZ: In light of the
10 testimony regarding the stun gun, I reserve the
11 right to possibly call a witness to pursue that
12 issue further, but I don't have a witness here at
13 this time.

14 And I am close, anyway to the end of the
15 night.

16 MR. CONNELLY: Were you asking for an
17 adjournment?

18 MR. MUSKOVITZ: If I was going to rest
19 at this point, I didn't think we were going to
20 continue at this point anyway if the idea was to
21 end around ten o'clock, unless we were going to end
22 shortly thereafter, which seems unlikely given the
23 pace we are going.

24 And because of the issue with the stun
25 gun, I want to reserve the right to call a witness

1 to explore that issue further.

2 MR. ST. CHARLES: Okay. We will allow
3 the ability to recall.

4 MR. OSETEK: Can I raise an objection?

5 This is the time for Mr. Muskovitz to put
6 his case on. He has the obligation of going
7 first. He has the obligation of informing me what
8 witnesses he had. He did not say anything about a
9 stun gun witness. I did not bring up the stun gun
10 testimony. He knew well about it all along. And I
11 think it is prejudicial to continue the hearing
12 while he is in his case because we are ready,
13 willing and able to complete this case tonight
14 instead of waiting until some indefinite future
15 point in time.

16 MR. MUSKOVITZ: Before you answer that,
17 can I have a moment with my witness?

18 (Discussion held off the record.)

19 (Brief recess.)

20 MR. ST. CHARLES: Back on the record.
21 You had an objection?

22 MR. MUSKOVITZ: I withdraw my request
23 for adjournment to call witnesses.

24 I am ready to proceed with calling
25 Sergeant Crowe on the issue of stun gun, and

1 prepared to do that now if the Board wants to.

2 I cannot -- I certainly misjudged the
3 length of time of the testimony for
4 Chief Brookins. So I am not going to estimate how
5 long my testimony will be with Sergeant Crowe. It
6 will not be as long as Chief Brookins, but there is
7 a cross-examination, possible redirect.

8 I leave it to the Board if they want to
9 do it now or at another hearing.

10 I assume you have witnesses you are going
11 to call; is that true or not.

12 MR. OSETEK: Well, I don't believe a
13 stun gun or the issue of the stun gun has any
14 applicability with regard to Michigan's Veterans
15 Preference Act.

16 I think it was a proposal by
17 Officer Young to address some concerns about his
18 physical potential, physical limitations.

19 I think it is interesting that he was
20 aware that the statute was progressing through the
21 legislature and it has in fact been passed. I
22 don't think we need any testimony about the stun
23 gun.

24 There was already questioning of Chief
25 Brookins about the stun gun. He talked about the

1 different kinds, how they worked, what they are
2 good for, not good for.

3 By bringing in another witness to testify
4 about that, a witness not identified to us, the
5 letter to us was that they would proceed first and
6 that Chief Brookins would be their witness, and
7 that we then would provide our defense. And we
8 prepared our defense based on that representation.

9 So at this point in time bring in a
10 witness, not about something that came up as a
11 result of my doing cross-examination that brought
12 new facts or new issues into this case, in fact, I
13 am trying to narrow it down to what I believe the
14 important issues are. But they are just trying to
15 bring in what I call cumulative testimony which is
16 going to duplicate what you already heard.

17 So I don't believe there is any necessity
18 for additional testimony on the part of the
19 township or on the part of the police department
20 regarding stun guns.

21 MR. MUSKOVITZ: Well, I think the
22 testimony is relevant. It would not necessarily be
23 cumulative. I believe Sergeant Crowe has probably
24 more knowledge about the issue of stun guns than
25 Chief Brookins, or at least another perspective on

1 it.

2 From the standpoint of identifying
3 witnesses -- from the letter that was written, it
4 was certainly the department's interpretation that
5 Officer Young wanted to use the stun gun in lieu of
6 his firearm. That may be or may not be the case. We
7 have not heard from him on that, but it was
8 certainly represented it was not the case.

9 But the use of the stun gun would be used
10 to -- in lieu of aggressive techniques. We believe
11 that is a very important issue from the standpoint
12 of the police department. And I believe it does go
13 to whether or not he is incapacitated to be a
14 police officer. And his competency to be a police
15 officer are issues decided under the Veterans
16 Preference Act. I do believe it is relevant
17 testimony.

18 These are important issues to everybody
19 here, not just Officer Young but the Township and
20 citizens as well to put and officer -- have the
21 Board determine whether or not someone is going to
22 be returned to work and using, now on issue of
23 stun gun deserves some attention.

24 We are ready to proceed at this time or
25 if you want, we will do it at another time.

1 MR. ST. CHARLES: At this point, I would
2 agree that in light of the fact that we have been
3 made aware of at least new legislation, it is fair
4 to say nobody was aware of, and how it does affect
5 the department, we need to have further testimony
6 and an additional witness. So we will allow that.

7 Whether we get there tonight in lieu of
8 the hour or in light of the hour, I don't think
9 that is going to happen. This would allow
10 Mr. Osetek to prepare for that testimony.

11 What I would recommend is that we adjourn
12 at this time, and we set, and I would suggest the
13 14th, which is two weeks from tonight. We have a
14 Board meeting a week from tonight. And I would
15 suggest if this is an agreement to everybody else,
16 we look at six o'clock so we can get started.

17 When I look at it, you have one more
18 witness and Mr. Osetek, you have three witnesses?

19 MR. OSETEK: We have listed a number of
20 witnesses. And the witnesses we choose depends on
21 the testimony that comes in.

22 MR. ST. CHARLES: It is possible we need
23 some time by the way things are going tonight.

24 MR. OSETEK: As I indicated earlier, we
25 could finish tonight.

1 MR. ST. CHARLES: And I realize that.

2 MR. OSETEK: I am absolutely confident
3 of that.

4 MR. ST. CHARLES: Normally we set our
5 meetings at 7:00, but to try to finish this up in
6 one night, does six o'clock work for you?

7 MR. OSETEK: It will, if I can check. I
8 didn't bring my calendar with me. I thought we
9 would be done tonight.

10 MR. ST. CHARLES: If it is a conflict,
11 we can schedule it to another off night.

12 MR. OSETEK: If I can -- I call Mel and
13 if I have a problem, I will let him know, okay.

14 MR. ST. CHARLES: I guess I ask the
15 Board if there is a problem or conflict in the
16 scheduling, is it something we can work out and set
17 the date? Is that agreeable to the Board members?

18 MR. SEYMOUR: Does it have to be a
19 Wednesday night?

20 MR. ST. CHARLES: We will try to work
21 something out that will work with everybody's
22 schedule.

23 Is that agreeable?

24 MR. OSETEK: Great.

25 MR. ST. CHARLES: We will adjourn at